IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13086 of 2003

For Approval and Signature:

THE HON'BLE MR.JUSTICE C.K.BUCH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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NOORMOHAMMADBHAI KASAMBHAI VORA - Petitioner(s)

Versus

UNION OF INDIA &3 - Respondent(s)

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Appearance :

PARTY-IN-PERSONfor Petitioner No(s).: 1.

MS PJ DAVAWALA for Respondent No(s).: 1.

MR JITENDRA MALKAN for Respondent No(s).: 1.

MS NV JOSHI, LD.AGP for Respondent No(s).: 2,3.

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CORAM :THE HON'BLE MR.JUSTICE C.K.BUCH

Date : 30/06/2005

CAV JUDGMENT

1.The petitioner-Noormohammadbhai Kasambhai Vora, resident of Golden Society, Bhalej Road, Anand, Dist.Kheda, is an Indian National and a citizen of India.

1.By invoking jurisdiction of this Court under Article 226 r/w. Articles 19 and 21 of the Constitution of India; especially Section 5 of the Citizenship Act, 1955 (hereinafter referred to as 'the Act'), the

petitioner has prayed for certain reliefs which are mentioned in the petition.

2.It is also relevant to note that this Court, to meet with the ends of justice, can grant any appropriate relief in view of nature of dispute brought before the Court and by the main relief the petitioner is trying to see that his wife-Anilabanu is conferred with the citizenship of India. Undisputedly, till the date of filing of the petition on 25th August, 2003, no such formal citizenship was conferred upon Anilabanu though she is a legally wedded wife of the petitioner since 1980.

3.To appreciate the say of the parties placed before the Court, certain facts are required to be stated in brief, which are as under :

1.The petitioner is the husband and the relief is prayed for his wife-Anilabanu. The petitioner married with Anilabanu as per the customs and religious rites of Islam in the year 1980 in India and on extension of VISA, she continued her stay in India. Thereafter, a representation was made by the petitioner on 30thJanuary, 1986, to grant citizenship/nationality to Anilabanu Noormohammad Vora as she was a national of Pakistan, stating the details and the fact of marriage, which had taken place in the year 1980 and she continued to stay in India upto 2nd April, 2001.

2.It is alleged that wife of the petitioner-Anilabanu stayed in India with him for about 20 years and she was forcibly deported to Pakistan on 2nd April, 2001, on an allegation that she has overstayed in India without any valid permission/VISA.

3.It is alleged that the said Anilabanu out of her wedlock delivered five children namely, (i) Nasimbanu (daughter), (ii) Firoz (son), (iii) Nilambanu (daughter), (iv) Farook (son) and (v) Rafik (son). On the date of filing of this petition, all the five were minors and were student of City School of Anand Town. They were brought up by mother-Anilabanu and father-Noormohammad. As the wife of the petitioner was citizen of Pakistan, technically on her marriage with the petitioner, she was entitled to get citizenship of India under the scheme of the Act; especially Section 5 of the Act. According to the petitioner, his wife had already made a representation to the Secretary, Home Department, Union of India, New Delhi, on 30th January, 1986 and the said representation was considered favourably by Union of India and she was intimated about the decision taken by the Union Government vide letter dated 21st April, 1986. However, the Government had directed her to fulfill certain requirements and to provide some documents including renunciation certificate issued by the Government of Pakistan. It is contended that except the renunciation certificate

of Government of Pakistan, all other relevant documents were sent to the concerned department of Union of India in the year 1992. But as she was not able to get "No Objection Certificate" in the year 1992, she could not send the said document either to the Government of India or embassy of Pakistan in India at New Delhi and no renunciation certificate was given by the Government of Pakistan. The Court is informed that National Identity Card is an important document issued by the Pakistan Government to its citizens. But the letter at Annexure-A of the petition clearly reveals that a positive decision to confer Indian citizenship was taken by Union of India and it was conveyed to the Chief Secretary of the State of Gujarat at Gandhinagar and a copy was sent to wife of the petitioner-Anilabanu. In the said letter, reference of the representation made by Anilabanu dated 30th January, 1986, is specifically made. Para :2 of the said letter reads as under :

1.As the petitioner was not getting "No Objection Certificate" from the DSP, Anand, and facing difficulties in the process, he filed Special Civil Application No.3384 of 2001 and prayed for following main reliefs :

"(B) Be pleased to directing the respondent no.1 to take decision on representation dated 30.1.86 to petitioner wife Anilabanu Noormohammad Vhora regarding nationality within a one month- looking to the peculiar

fact and the circumstances of the case.
(C) Be pleased to directing the respondent no.2 to grant extension of Visa application for the period of 1.10.1999 to 1.10.2001 within seven days to looking to peculiar fact and the circumstances of the case."

1.It is contended that the learned senior standing counsel appearing for the Union of India had agreed that the relief "B" as prayed for may be granted and in reference to prayer "C" made in the said petition, it was submitted before the Court that request to consider the VISA application for the period from 1st October, 1999 to 1st October, 2001, shall be considered, looking to the peculiar facts and circumstances of the case, preferably by 8th August, 2001, subject to payment of appropriate fees. It is not a matter of dispute that appropriate fees were paid or not. A copy of the order passed by this Court in the said proceedings is produced with the petition (Annexure-B). In compliance of the order passed by this Court, the petitioner attempted to pay the amount of Rs.110-00 ps. but the authority refused to accept the same is one of the allegations made in the petition and, therefore, the amount was sent by Money Order to the concerned authority. However, the said Money Order was also refused. During oral submissions, the petitioner, who is also an advocate appearing as party-in-person, has submitted that he was shocked when he received Money Order back though there was clear reference of the order passed by this Court in Special Civil Application No.3384 of 2001. Xerox copies of the Money Order sent and refused are also produced at Annexure-C with this petition. In the main petition, the respondent no.2-State of Gujarat, moved one Misc. Civil Application No.1188 of 2003 on 16th June, 2003 and requested the Court for suitable modification in the original order dated 25th July, 2001, passed in Special Civil Application No.3384 of 2001 but as the petitioner remained absent, the Court allowed the application and vide order dated 24thJune, 2003, the Court passed one order and it would be beneficial to quote the relevant part of the order because the same is relevant in view of the nature of reliefs prayed for in the present petition, which is as under :

"2. I have gone through the application filed by the State of Gujarat and I have heard Mr. R.M. Chauhan, learned AGP in this behalf. The learned counsel for the applicant submitted that at the time of passing the order by this Court on 25.7.2001 this Court has directed Union of India to take decision on representation dated 30.1.1986 regarding nationality and further directed that the respondent No.2 will also consider Visa application for extension for the period from 1.10.1999 to

1.10.2001.

3. Mr.R.M. Chauhan, learned AGP has stated that when the aforesaid order was passed, an important aspect was not brought to the notice of the Court namely that the respondent who claimed the above two reliefs and which were as directed by this Court to give petitioner lady Aneelabanu could not have been granted because of the fact that Aneelabanu had already been deported to Pakistan on 2.4.2001 for not fulfilling the requirements of the Foreigners' Act.

4. In view of the aforesaid development, the prayer granted by this Court did not survive at that time as she had already deported to Pakistan. The question of determination of nationality also does not arise. In view of the same, this Misc. Civil Application is allowed for condonation of delay as well as this Court also modify the order dated 25.7.2001 directing the respondent not to claim the above two reliefs in view of the fact that Aneelabanu had already deported to Pakistan on 2.4.2001. This Misc. Civil Application is accordingly disposed of."

1.In view of the orders passed in the said Misc.Civil Application, the respondents were relieved from the legal obligation, whereby they were directed to grant extension of VISA application for the period from 1st October, 1999 to 1st October, 2001 in compliance of the earlier order dated 5th July, 2001. The order dated 26th June, came to be passed only on the ground of one fact that wife of the petitioner was already deported to Pakistan on 2nd April, 2001, much prior to the order passed by the Court on 5th July, 2001. But the fact remains that one attempt was made by the petitioner by way of filing Habeas Corpus petition being Special Criminal Application No.247 of 2001, so that the forcible deportation of Anilabanu can be prevented prior to 2nd April, 2001. It is contended by the petitioner that for want of NOC from the DSP, Anand, the wife of the petitioner was not able to satisfy the officers of the Pakistan Embassy at New Delhi, so that they can accept the passport and renunciation by tendering National Identity Card and, therefore only, the extension of VISA period was prayed for and the petition to grant very relief was also moved in the year 2001.

2.One Habeas Corpus petition came to be disposed of by the Division Bench of this Court (Coram : K.R. Vyas and R.P. Dholakiya, JJ) on the ground that the wife of the petitioner has been deported to Pakistan being a Pakistani citizen and she had overstayed in India and the Court found that when she was deported on or about 30thMarch, 2001, no useful purpose would be served by issuing notice. The Division Bench of this Court preserved the liberty of the petitioner to make appropriate representation either to the respondent no.1 or respondent

no.2. The grievance of the petitioner is that his representation was not considered by the concerned authorities and, therefore, he was compelled to file a writ petition for appropriate writ, order or direction being Special Criminal Application No.931 of 2001, but ultimately, that petition also came to be rejected by the Court.

3.It is the say of the petitioner that his wife-Anilabanu ought not have been deported to Pakistan at all as she was not responsible for infringement of any law and especially Foreigners' Act and the approach of all the authorities has remained hyper-technical. They have handled the issue and in dealing with the representations made by the petitioner and his wife, in an arbitrary manner. According to the petitioner, following undisputed facts were very well before the authorities that :

(i) Anilabanu was a Pakistani national. Her application being an application well within rules and scheme of Section 5 of the Act was considered and accepted. (ii) Anilabanu married with the petitioner in the year 1980 and the day on which she applied for citizenship by registration, she had remained in India after her marriage with the petitioner for more than five years and for all these period her stay in India was not in violation of any rule or law for the time being in force. (iii) Anilabanu's stay on the date of alleged deportation was of more than 20 years and by that time, she had delivered five children, who can be said to be Indian Citizens and having Indian Nationality since their birth and all of them were school going. (iv) The entitlement to get citizenship on registration was already accepted by the Government of India. (v) There were documents before the authority to show that the petitioner's wife made all attempts to surrender her passport and other relevant documents to Pakistan Embassy at New Delhi.

1.The papers produced in support of the additional affidavit filed by the petitioner reveals that the petitioner as well as Anilabanu had cooperated with the authorities during inquiry and the letter of Additional Collector, Dist.Kheda, dated 13th December, 1992, was responded properly on 24th January, 1993. To satisfy the anxiety of the Court, the petitioner has also produced list of documents demanded by the Pakistan Embassy at New Delhi from the petitioner and the controversy is brought before the Court that the Pakistan Embassy has never demanded NOC while accepting National Identity Card, which is altogether a different document than the NOC from DSP of the concerned district. But the fact remains that all attempts to renounce the Pakistani Citizenship were made by Anilabanu and she had stayed in India under a valid permit/permission till 1st October, 1999. On 16th August, 2000, i.e. after a lapse of more than reasonable period, a

letter was received by the wife of the petitioner that she should pay overstay VISA fees to the tune of Rs.1250/- and one another amount of Rs.30/- towards LTV fees as mentioned in the letter dated 16th August, 2000, and she was informed that if such fees are not paid, then appropriate steps under the Foreigners' Act shall be taken against her and she was asked to complete the formalities within four days from the date of receipt of the said letter. Thereafter, after several months, the DSP, Anand, in exercise of powers conferred upon him by Clause 'C' of subsection (2) of Section 3 of the Foreigners' Act, 1946, r/w. Government of India's notification (Ministry of Home Affairs) dated 15th July, 1963, ordered deportation of Anilabanu-wife of the present petitioner. Undisputedly, the wife of the petitioner was prosecuted by the State for the offences punishable under Sections 7(3) and 14 of the Foreigners' Act, 1946, and it was alleged by the prosecution that she had overstayed in India being a Foreign Visitor after 1st October, 1992, and she had never applied for extension. It is the allegation in the complaint that the accused had visited India on Visitor's VISA from 16th June, 1992 to 19th September,1992, and therefore, she was under obligation to pray for extension prior to 1st April, 1992. With additional affidavit, a judgment of the competent criminal Court has also been produced by the petitioner in response to the query raised by the Court and it emerges that technically there was no attraction of Section 7 of the Foreigners' Act, 1946, because Section 7 deals with obligation of Hotel keepers and others to furnish particulars. There was no question of accommodating the wife of the petitioner at Anand because the State machinery were very well aware about the fact that she is a legally wedded wife of the petitioner since 1980. It also emerges from the judgment of the criminal Court and the deposition of the prosecution witness no.1-Police Head Constable-Mangalbhai Chaturbhai that Anilabanu had applied for extension of VISA period on 16th September, 1992, itself, but the said witness was not aware about the process that had taken place. There is documentary evidence to show that the wife of the petitioner was granted extension from 17thJune, 1992 to 11th August, 1996 (pg:17). A xerox copy of the said document is also shown to the Court and the same is at Annexure-C with the additional affidavit dated 30th July, 2004. It also emerges from affidavit that attempt to surrender original passport and other papers to Pakistan Embassy was made by the petitioner but the same was not extended as the first letter received by Anilabanu as the decision taken to confer citizenship on registration was in Hindi, our national language; the Pakistan Embassy was insisting for original in English language. On such a fact

situation, the act of deportation branding the wife of the petitioner as foreigner or an offender can be said to be hyper-technical. It is true that in such a sensitive matter, each formality has to be completed in accordance with law and rules framed for the purpose and equity has very little role to play. So it will be difficult for the Court to say that deportation though was forcible and it was possible to grant permit/permission for further period, the deportation could not be said to be totally illegal. The State authorities have accepted in a hyper-technical way, especially when there was a genuine dispute only as to the non-payment of Rs.1250/-. It is rightly submitted that the dispute was genuine and on earlier occasion such amount of fees was never asked by the Government of Gujarat or by the officials, when she was accorded permission to extend her stay. It is also relevant to note that after marriage of the petitioner with Anilabanu, she visited Pakistan on more than one occasion but on all such visits, she had visited Pakistan, after informing State machinery and she had returned to India. In early years of marriage, the wife who visits her parental home on occasions should not be looked with doubt and it would be wrong to interpret that her all these visits indicate her disinclination of renouncing nationality of Pakistan.

2.When the matter was placed before this Court, after hearing the parties and the hardship that the said five minor children must have faced by the time, the Court passed an order whereby the respondents were directed to see that Anilabanu-wife of the present petitioner deported to Pakistan is brought back to India or is permitted to enter in India and thereafter, this Court can pass appropriate orders in reference to the stand taken by the respondent-authority in general and Union of India in particular.

3.I would like to reproduce relevant part of the said order passed by this Court on 20th January, 2004, which is as under :

"2. During the course of oral submission made by the petitioner as party in person, Ms.Hansa Punani learned AGP and Mr.D.N. Patel learned Senior Standing Counsel for Central Government, it transpired that the wife of the petitioner was to surrender her National Identity Card popularly known as NI Card issued by her country i.e. Pakistan, to the embassy at New Delhi.

3. Undisputedly, the wife of the petitioner Anilabanu is a citizen of Pakistan and she has married the petitioner in the year 1980 and out of the wedlock they have five children (3 daughters and 2 sons). All these five children are in India and they are Indian citizens. In the month of April, 1992, the application to confer/grant Indian citizenship made by

the wife of the petitioner Anilabanu, was considered by the Home Department under the Citizenship Act, 1955 and relevant documents were also sent to the Home Department.

4. The attempts to surrender the passport of Anilabanu along with other documents were made by the present petitioner but according to the petitioner, office of the High Commissioner of Pakistan was insisting upon the production of No Objection Certificate issued by the police authority i.e. DSP, Ahmedabad. The decision to confer the citizenship to Anilabanu was already taken. But before the citizenship could be conferred formally, on renunciation of her citizenship of Pakistan, the authorities of State of Gujarat found that the wife of the petitioner has over stayed without proper extended visa and therefore, she was deported to Pakistan. At present she is in Pakistan. This unwarranted separation is a matter of anguish and anxiety of this court. Now in the present proceedings and hearing it is clarified by the State of Gujarat that as she has been deported to Pakistan. It would not be practicable or possible to issue No Objection Certificate.

5. Ms.Punani learned AGP has fairly accepted that there was nothing incriminating against her till the date on which she was deported to Pakistan. There is no criminal antecedents recorded against her. So in this set of facts, the Union of India can be asked to see that Anilabanu is given fresh visa by the High Commissioner of Pakistan so that she can again enter India to complete the procedure of surrendering her original Pakistani passport to the concerned Embassy and National Identity Card issued by the Pakistan Government.

6(i). The petitioner has fairly accepted that his wife Anilabanu is holding National Identity card and she is ready to apply for fresh Visa and to pay the necessary fees, if the same are required to be paid for such Visa.

6(ii) The wife of the petitioner Anilabanu was even tried for the alleged commission of offence punishable under section 7(3) of the Foreigners' Act, 1948 by the competent criminal court. Criminal Case No.315 of 1993 has been conducted by the learned JMFC, Anand and after appreciating the evidence, the court acquitted the wife of the petitioner vide judgment and order dated 27.2.1998. Ms.Punani learned AGP has submitted that the State of Gujarat has accepted the said order of acquittal. So on merit, the petitioner has a strong case.

7. Undisputedly, the five children delivered by Anilabanu are in India. So the Union of India is required to be directed by way of interim arrangement to see that she is granted visa, at the earliest, preferably

within four weeks, on her requesting the office of the Indian High Commissioner in Pakistan. Therefore, the Union of India is directed by way of an interim arrangement to grant Visa, on her requesting the office of Indian High Commissioner in Pakistan.

8. The registry of this Court is directed to send a copy of this order to the office of the High Commissioner of India at Pakistan so that the wife of the petitioner can approach the Indian High Commissioner with a valid application to grant fresh Visa for some reasonable period so that the other administrative formalities can be complied with after her arrival in India.

9. Ms.Punani submits that on her arrival in India, Anilabanu can approach the State Government authorities so that the formalities which are required to be undergone, can be complied with smoothly.

10. It is understood that the process of conferring Indian Citizenship to the present petitioner is still open. But if the same is treated as closed because of lapse of time, then it would be proper to say at this stage that it shall be treated as pending so that appropriate decision can be taken as expeditiously as possible.

11. The court is inclined to keep this petition pending and the same is adjourned to four weeks so that the petitioner can intimate about the progress in the matter."

1.After passing the above order, the matter was adjourned to 6th April, 2004 and on that day the Court passed the following further order :

"Heard Mr.Noormohammadbhai K. Vora, party-in-person. It is submitted that earlier order passed by the Court has been substantially complied with and wife of the party-in-person has now come back to India. She has been granted 2 years' Visitor Visa.

Hence, not it will be obligatory on the part of the petitioner party-in-person as well as his wife Anilabanu to see that requirements to have formal intimation of conferring citizenship on Anilabanu are satisfied before the Union of India as well as before the Pakistani Embassy. As Anilabanu has entered India before some days, normally it would not be necessary to have No Objection Certificate. However, if it is required, then concerned Dist.Supdt. of Police may consider the request of the petitioner to grant NOC from the date of entry of his wife in India so that the same can be tendered before Pakistani Embassy along with original passport and NI Card. If Union of India has taken any decision to confer citizenship on Anilabanu-wife of the petitioner, then the same shall be intimated by the concerned competent authority to avoid further proceedings and complications. Ld.AGP Ms.Punani and ld.counsel appearing for Union of India shall intimate the concerned authority for taking

appropriate decision in the matter.

This petition could have been disposed of with above observations and directions, however, in the interest of justice and only to see that things run smoothly, I am inclined to adjourn this matter. Hence, S.O. to 06.05.2004."

1.After passing of the above order, on 6th May, 2004, Ms.Davawala, ld. standing counsel appearing on behalf of Union of India, submitted that it is not possible now for the Union of India to register the name of Anilabanu-wife of the petitioner, as an Indian citizen under Section 5(1)(c) of the Act. In support of her submission, she has tendered one letter dated 30th April, 2004, addressed by the Under Secretary to the Government of India, to the Secretary, Government of Gujarat, Home Department, Sachivalaya, Gandhinagar. I would like to reproduce the relevant part of the said letter because the same goes to the root of the present petition, which is as under :

"Sir,

I am directed to refer to the State Government's letter No.LTV(10)15/80-fI dated 31.03.2004 on the subject noted above and to say that this Ministry's acceptance letter dated 21.04.1986 does not hold good and is thus is not valid, as she never renounced her Pakistani Nationality. Further, she left India in 1991 and again she was deported on 02.04.2001 and had been in Pakistan around three years.

2. In the circumstances, she may be advised to apply afresh u/s. 5(1)(c) of the Citizenship Act, 1955, after completion of five years regular stay since her last arrival dated 26.02.2004 as per the procedure prescribed in the Citizenship Act, 1955 and Citizenship Rules, 1956, along with her valid Residential Permit and Passport. her request for Indian citizenship can be considered only after completion of five years regular stay since her last arrival dated 26.02.2004, provided she holds valid Residential Permit at that time.

3. The State Government may apprise the position as aforesaid to the Hon'ble court accordingly on the next date of hearing on 06th May, 2004 and intimate the Hon'ble court's orders/directions thereafter."

1.It is not a matter of dispute that the say of the petitioner is that his wife could have been conferred on Indian Citizenship by registration under Section 5(1)(c) of the Act and the day on which she applied, she had stayed for a period of more than five years in India and thereafter only, probably after discreet inquiry, the above referred letter dated 21st April, 1996, conveying the decision of the Government of India was sent to the petitioner and the wife of the petitioner was permitted to stay over in India for several years and

she has delivered five children in India during that time and during her continuous stay in India, her visit to Pakistan after intimating the local authorities and her arrival back to India can be construed as her continuous stay in India in the background of other set of facts and a finding recorded by the competent criminal Court, whereby Anilabanu was acquitted after referring to several documents and oral evidence, which were produced before the Court. She had never left India with her wish and will and/or with an intention not to return to India. The period of five years of regular stay has not been correctly interpreted by the authorities. I would like to quote relevant part of Section 5 of the Act, which is as under :

"5. Citizenship by registration : (1) Subject to the provisions of this section such conditions and restrictions as may be prescribed, the prescribed authority may, on application made in this behalf, register a citizen of India any person who is not already such citizen by virtue of any of the other provisions of this Act and belongs to any of the following categories :

(a) xx xx xx

(b) xx xx xx

(c) persons who are or have been, married to citizens of India and are ordinarily resident in India and have been so resident for five years immediately before making an application for registration."

1.The above provisions should not be read or interpreted technically and for that purpose, the Court finds that it would be beneficial to quote the provisions of Chapter-2 of Citizenship Rules, 1956 and especially Rule 4, which deals with the form of application for registration under Section 5(1)(c) of the Act, which is as under :

"4. Form of application for registration
under Sec.5(1)(c) :

(1) An application by a person for registration as a citizen of India made under Sec.5(1)(c) shall be in Form II and shall be accompanied by an undertaking in writing that he/she will renounce the citizenship of his/her country in the event of his/her application being sanctioned.

(2) The oath of allegiance specified in the Second Schedule to the Act shall be affirmed (or sworn), subscribed and attested before registration.

(3) An application under sub-rule (1) shall not lie unless for five years immediately before the date of application, applicant-

(a) has been ordinarily resident in India; or

(b) has been in the service of a Government of India.

(4)Notwithstanding anything contained in sub- rule (3), in the case of a

woman married to a person in the service of Government of India, the Central Government may, if in the special circumstances of the case it thinks fit, exempt such woman from the operation of that sub-rule.
(5) Notwithstanding anything contained in sub- rule (3) in the case of a woman who has been married to an Indian citizen for not less than five years, whose marriage is still subsisting and who has visited India at least once, the Central Government may, if in the special circumstances it thinks fit, exempt such woman from the operation of that sub-rule."

1. So a person is not entitled to file the application unless he/she has stayed in India for five years immediately before the date of application. However, explanation under sub-rule (3) says that in computing the period of five years broken period of residence and service under Clauses "A" and "B" be taken into account. So the scope of Section, purpose and intention of legislature has not been correctly interpreted by the authority and it would be wrong to interpret that as now the wife of the petitioner has returned to India under orders of the Court, nothing can be done till she completes five years of stay in India. The Court is not in agreement with the submissions made by Ms.Davawala that she could have asked for citizenship from the Indian consulate in Karachi and after getting Indian passport from the Indian consulate, she ought to have entered in India. But the way in which she was forced to leave India by deportation ignoring all relevant facts and circumstances of the case and her genuine dispute as to the payment of fees of Rs.1250/-, including the act that she was not granted NOC by DSP, Anand, I am afraid that she could have been granted Indian passport while sitting in Pakistan without NOC from DSP, Anand, and in light of the prosecution that was filed against her though she was holding valid permission to stay in India. All incomplete formalities can be completed by the Government machinery and the State of Gujarat as well as department of Home Affairs can help her in making process smooth so far as the administrative formalities qua Pakistan Embassy at New Delhi are concerned.
2. The fact of non-production of renunciation certificate issued by the office of the High Commissioner of Pakistan, is being magnified by the respondents; especially the State of Gujarat as well as the Union of India in the present case. It is not the say that no such attempt was made by the petitioner or his wife Anilabanu to get renunciation certificate much prior to her deportation to Pakistan in the year 2001. It is true that production of renunciation certificate is one of the basic requirements but the same was not received by her either on the ground of bureaucratic approach of the office of the High

Commissioner of Pakistan or because of some misunderstanding that had prevailed on requirement of NOC by DSP, Anand. The ground of renunciation certificate was under the domain of office of the High Commissioner of Pakistan and it is difficult for this Court to accept that no sincere efforts were either made or though the same was ready with the office of the High Commissioner of Pakistan, was not obtained and produced by the petitioner before the competent authority. The format of the application form in reference to Section 5(1)(c) of the Act r/w. Rule 4 simply states that the present petitioner should express willingness to renounce nationality/citizenship of the country of which he/she belongs. It is not the say that no such willingness was either shown by the petitioner or it was found doubtful during inquiry by the competent authority. In such a situation, there was no legal need to deport Anilabanu-wife of the petitioner forcibly to Pakistan on hyper-technical approach as she was prosecuted earlier for no reason, she could have been prosecuted again if in reality she had failed in getting the period extended for her stay till renunciation certificate is either granted by the Pakistan Embassy and produced before the authority or the same is denied by the office of the High Commissioner of Pakistan. It is neither legal nor proper for the authorities to presume that Anilabanu-wife of the petitioner was not in a mood to renounce her Pakistani citizenship or the office of the High Commissioner of Pakistan construed to have refused to issue renunciation certificate. So in this fact situation, the Court is not in agreement that the decision taken by the DSP, Anand, dated 26th March, 2001, deporting Anilabanu-wife of the petitioner to Pakistan was justified. Our mother India, of course, is facing various types of difficulties despite carrying heavy burden of unauthorized intruders and foreign nationals but it would not make the stay of Anilabanu-wife of the petitioner justified beyond the period of permission but when the question of pushing such a person out of the border of the country needs redressal, then totality of facts and circumstances of each case or individual normally should not be ignored. Anilabanu-wife of the petitioner was undisptuedly legally wedded wife of an Indian citizen and real mother of five children, who are also Indian nationals. The legal service authorities rendering services althroughout the country could have been approached either by the petitioner or his wife or even by the concerned Superintendent of Police before executing the order of deportation. Of course, this Court is not adjudicating the validity of the order dated 26th March, 2001, passed by the DSP, Anand, or the said order is not at all under judicial review at present. But when it is being placed before the Court by respondents

that as now Anilabanu has been pushed out of the country and on that day no formal citizenship can be said to be have been conferred on her on registration under the Act, she cannot be granted citizenship or her case cannot be considered for such registration till she completes five years regular stay since her last arrival on 26th February, 2004, under the orders of this Court and she should be put under obligation to get her residential permit renewed from time to time. In such a situation, the authorities can take a legitimate decision that the stay of such an individual should not be construed as an illegal stay till the renunciation certificate is either granted or refused by the particular country of that particular individual. Even there is scope to carve out such/specific policy; especially when in the process of globalization, thousands of families of Indian origin have started residing in number of other countries and neighbouring countries like Pakistan, Bangladesh, Sri Lanka, and mainly in commonwealth countries. Otherwise, such an individual is likely to suffer mental, physical and financial harassment on sheer technicalities of rules and sub-rules of the mind-set of an individual bureaucrat of each country or the working in the offices of the respectable Consulates or High Commissionerate. Delay in applying for citizenship under Section 5(1)(c) of the Act or visit of such applicant to other country or countries should not be viewed with doubt in all cases. This Court is supposed to take care of every right of any individual who is Indian National and especially, the privilege flowing under not only Constitution of India but also from any other statutes or the rules having statutory effect. The petitioner's wife-Anilabanu's visit to Pakistan after intimating the local authorities in India and her re-entry in India and thereafter long stay in India reveals facts contrary to the allegations. On the contrary, it is found that her visit to Pakistan was nothing but a formality and it should not be interpreted in any way that she had impliedly decided to withdraw her demand to have Indian nationality. Once the demand was found genuine and circumstances that had taken shape in subsequent years of her stay in India till 30th January, 1986, the day on which she applied for registration under Section 5(1)(c) of the Act and thereafter, makes her case genuine. When our country India has always remained anxious to have cordial relations and harmonious brotherhood with neighbouring countries, the wife of the petitioner cannot be denied citizenship on technicalities; especially when there is no fault on her part. The Court shall also think of one probability i.e. delay by High Commissionerate of Pakistan in granting or refusing the renunciation certificate. The issue can be taken up at the request of the

department of Home Affairs through Ministry of External Affairs, otherwise, many minor children shall have to face mental stress or trauma, when their father or mother are deported.

3.At this stage it is necessary to state that the prescribed authority or the Central Government may grant or refuse an application made under Section 5 or 6 of the Act and there is an element of discretion and these authorities are not required to assign any reason either for such grant or refusal of application. The decision of the authorities can be challenged by way of Revision contemplated under Section 15 of the Act; subject to the provisions of Section 15 of the Act, the decision of the prescribed authority or the Central Government either granting or refusing the application under Section 5 or 6 of the Act is a decision final and cannot be made a subject of challenge before any Court. But this Court in exercise of powers vested under Article 226 of the Constitution of India can very well looked into the matter and can issue appropriate writ, order or direction to the concerned authorities because the facts emerging from record clearly reveals that Anilabanu-legally wedded wife of the present petitioner, is being deprived of citizenship though there was nothing wrong found in the inquiry contemplated under Section 9 of the Act and also as the present petitioner has not challenged the decision taken by the authorities and the same is not the subject matter before this Court. On the contrary, the say of the respondent-authorities before the Court is that the decision to confer citizenship on registration under Section 5(1)(c) of the Act was taken but the authority could not execute the decision registering the wife of the petitioner as Indian citizen but for some inaction, may be act or omission, she was considered as foreign national and, therefore, deported to Pakistan i.e. to her country. In response to the query raised by the Court, the ld.AGP as well as Ms.Davawala, ld.standing counsel, have fairly accepted that in sum and substance the stand taken by both the authorities are reflected in the reply affidavits filed in the present petition and especially, in the letter dated 30th April, 2004, referred to hereinabove and this Court in view of the statutory provisions may pass appropriate orders in the larger interest of justice and no formal decision to refuse citizenship has been taken till date by the Government of India. The stay period in Pakistan on forcible deportation even can be computed and considered a period "deemed to be in India". Such an extraordinary exception, if required, it be made by the administration.

4.Under the orders of the Court referred to hereinabove, Anilabanu-wife of the petitioner, has been granted leave to stay in India and she is

back with her family. This is a case wherein this Court shall have to give direction not only to the party respondent but also to the petitioner. It will be the duty of the petitioner being an Indian national to see that his wife acts as an individual in accordance with rules and law. Of course, she has also acted mainly in conformity with the statutory provisions but for the reasons beyond her control, she could not procure renunciation certificate from the office of the High Commissioner of Pakistan at New Delhi and/or NOC from the DSP, Anand, as she is residing in District Kheda, DSP of District Kheda may grant NOC and can clarify the situation that during her stay at Anand, she is not found involved in any serious offence nor she has been convicted by a competent Court for any grave offence during her stay at Anand in all these years. This would be beneficial to her in getting process more smooth. The National Identity Card of the wife of the shall have to be surrendered before Pakistani authority in the office of the High Commissioner of Pakistan at New Delhi. The petitioner shall see that his wife accompanies him to New Delhi and all formalities are completed and in the event of difficulty, the petitioner may approach this Court by moving Miscellaneous Application. Anilabanu-wife of the present petitioner shall also file an affidavit duly sworn in by her that she renounces the nationality of Pakistan and she has no more interest in the citizenship of Pakistan. Thereafter, the petitioner shall see that he or his wife Anilabanu, shall tender those documents along with xerox copy of the affidavit sworn by her in the office of the High Commissioner of Pakistan at New Delhi and in the department of Home Affairs of Government of India and if any positive or negative decision is not conveyed to Anilabanu as to grant of renunciation certificate, then the department of Home Affairs shall take up the issue through Ministry of External Affairs with the office of the High Commissioner of Pakistan at New Delhi and thereafter only, the decision on the application of the wife of the petitioner under Section 5(1)(c) of the Act be taken. At present, the wife of the petitioner is granted six months' time for the purpose. If the office of the High Commissioner of Pakistan needs English version of the decision taken by the Government of India in the year 1986, then the concerned authorities may provide such English version also simultaneously with the original Hindi version.

5. It is hereby declared and ordered that the stay of Anilabanu-wife of the petitioner in Pakistan after 30th January, 1986, and particularly after her deportation in the year 2001, should be considered as temporary break and she can be said to have stayed in India through

out after her marriage since 1980 and this temporary break in period shall not be considered as an embargo in dealing with the case of the petitioner for grant of Indian citizenship on registration under Section 5(1)(c) of the Act. The contention of the respondents is negatived that her application cannot be considered till she stays in India continuously for a period of more than five years after 26th February, 2004. If fresh application, without prejudice to the rights and contentions of the petitioner as well as Anilabanu, is required to be filed, then the petitioner shall see that such an application is filed afresh within a period of 30 days from the date of receipt of certified copy of this judgment. The documents tendered on earlier occasion should be construed to have been tendered with the fresh application and the file pending in the office of the District Magistrate, Anand/Kheda and the Union of India be tagged with the papers of fresh application, if obtained and filed for administrative convenience. If the concerned authorities including the office of the High Commissioner of Pakistan takes more than reasonable time in granting or refusing the renunciation certificate, then for all such period irrespective of length, her stay in India shall not be considered as unauthorized or illegal and decision to grant permission should be construed as formality unless in compelling circumstances.

1. Ultimately, if the decision as to registration goes against the wife of the petitioner, then while conveying the decision, she should be apprised of her right to file a Revision Application under Section 15 of the Act and the order refusing the registration shall not be implemented for 60 (sixty) days from the date of communication of such decision of refusal/rejection of the Revision Application under Section 5(1)(c) of the Act.

1. It is clarified that the petitioner and especially Anilabanu shall be under obligation to pay necessary fees and process charges, if are required to be paid under the rules framed under the Act or as per the Government Resolutions.

1. If the application of Anilabanu-wife of the present petitioner is granted by the authority, then she shall be issued a certificate of registration in Form VI duly signed by the competent officer at the earliest, preferably within 30 days from the date of decision.

1. In view of above observations and directions, the present petition is hereby partly allowed.

Direct Service is permitted.

(C.K. Buch, J)

Aakar